

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Closed Captioning and Video Description of)
 Video Programming)
)
 Implementation of Section 305 of the)
 Telecommunications Act of 1996)
)
 Video Programming Accessibility)

MM Docket No. 95-176

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REPLY COMMENTS OF C-SPAN AND C-SPAN 2
(National Cable Satellite Corporation)

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CLOSED CAPTIONING

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**REPLY COMMENTS OF C-SPAN AND C-SPAN 2
(National Cable Satellite Corporation)**

I. INTRODUCTION

National Cable Satellite Corporation ("NCSC") submitted comments in the above-referenced proceeding on behalf of its nationally distributed public affairs programming services C-SPAN and C-SPAN 2, and on behalf of C-SPAN 3, a parttime start-up service distributed in the Washington, D.C. metropolitan area. All three programming services (collectively, the "C-SPAN Networks") are free of commercial advertising and are operated on a non-profit basis.¹ In light of the significant costs that closed captioning will impose on the

¹ C-SPAN is available to 70.2 million households, and C-SPAN 2 is available to 46.1 million households, primarily by means of cable television systems, but also by means of MMDS, SMATV and DTH satellite. C-SPAN 3 is distributed to 383,000 thousand households in the Washington, D.C. area by means of fiber optic cable to cable systems.

C-SPAN Networks, we made several comments on both jurisdictional and implementation issues in response to the *Notice of Proposed Rulemaking*.² Having reviewed the comments of others in this rulemaking, we reiterate the points we made in our original comments, and offer additional points and emphasis in these Reply Comments.

II. THE REALITIES OF THE CAPTIONING BUSINESS WILL NOT PERMIT A RAPID PHASE-IN PERIOD. A 10-YEAR PHASE-IN PERIOD IS APPROPRIATE, ESPECIALLY FOR INFORMATION-BASED PROGRAMMERS LIKE THE C-SPAN NETWORKS.

A. The Commission is Correct That the Phase-In Period Should be Long Enough for the Market to Adjust.

We reemphasize here that the Commission was correct in its initial conclusion that the phase-in period for closed captioning should be long enough to allow for both the television and captioning industries to adjust to the heavy demands the closed captioning obligation will impose on them. Several commenters have proposed phase-in periods of only 2, 3 or 4 years. The desire for such a rapid implementation is certainly understandable, but it is also an unrealistic one. The Commission correctly concluded that while much of the technology might be in place, the human resources are not and they are not likely to be in the short term. As our own preparations for captioning have revealed to us, and as others have commented in response to the *Notice*, the number of qualified stenocaptioners in place and even the number of trainees in the pipeline are insufficient to meet either a short term obligation or even the standard of quality sought by the deaf community.

We urge the Commission to hold firm to its conclusion that full compliance can not be achieved in the short term. Indeed, we urge the Commission to adopt the proposal it offered

² In the *Matter of Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, *Notice of Proposed Rulemaking*, released January 17, 1997 ("Notice").

in the alternative that a full 10 years, rather than 8 years, be allotted for the transition to full captioning.³

The longer period is necessary for programmers such as the C-SPAN Networks, whose format consists nearly entirely of so-called "talking heads." As we noted in our Comments, our programming format is among the most spoken-word-intensive formats in television.⁴ Our long-form coverage of events contains few breaks in the stream of words. We have very few interstitial programs. We have no advertising breaks, and fewer promotional spots than most. The result is a large captioning burden without the opportunity to take advantage of many of the proposed exemptions. A 10-year phase-in will ease the cost burden, which is substantial. As we noted in our Comments, using current costs, closed captioning would consume 26% of the programming budget of the C-SPAN Networks by the end of an 8-year phase-in period. Our non-profit operation will benefit significantly from a longer time period within which to come into full compliance.

B. The Commission Should Not Impose a Compliance Schedule Based on Programming Content.

We also urge the Commission to reject an accelerated schedule of compliance for programmers based on the content of the programming. It is understandable that many commenters would seek to have news and public affairs programming captioned first or earlier than other programming. However, the Commission would tread on thin jurisdictional grounds were it to distinguish among programmers on the basis of their content. Such a reach goes well beyond the dictates of the statute. Moreover, the economics of news and public

³ Notice at Para. 41

⁴ Probably only the full-time shopping networks are as word-intensive as the C-SPAN Networks.

affairs programming would, if anything, dictate a longer rather than a shorter phase-in period for them. Entertainment, sports and "feature" programming have always generated more revenue than hard news. And hard news, has always generated more revenue than pure public affairs and information programming. An accelerated compliance schedule imposed on the C-SPAN Networks and similar programmers⁵ would lead to an untenable result: the greatest burden placed on those with the least economic resources. The Commission will avoid such a result and it will avoid the jurisdictional question by making no rule based on the content of programming.

III. NATIONALLY DISTRIBUTED START-UP PROGRAMMING SERVICES SHOULD ENJOY A 5-YEAR GRACE PERIOD AND A MINIMUM DISTRIBUTION LEVEL BEFORE THE CAPTIONING OBLIGATION IS IMPOSED

The delay in the widespread distribution of digital compression capability has similarly delayed the launch of NCSC's programming services C-SPAN 3, C-SPAN 4 and C-SPAN 5. This Fall, however, our current plans are to distribute C-SPAN 3 nationally by satellite for subsequent distribution by cable systems and other retail providers. As with any start-up service, we fully expect the initial distribution to be small, and then to grow gradually after the service has had time to prove its added value to our customers. In the meantime, NCSC will be carefully measuring the cost of the start-up service against its audience reach. In light of the comparatively low production costs and the initially low audience reach of C-SPAN 3, captioning costs, which we expect to be significant, will alter that calculus dramatically. C-SPAN 3, and subsequent NCSC start-up services, if any, will have a far greater chance of

⁵ At least three state-based non-profit public affairs networks would also be subjected to the same accelerated schedule: PCN (Pennsylvania Cable Network), The California Channel, and TVW (a statewide network serving the state of Washington).

survival if they are exempted from the captioning obligation for a period of five years from the date of national distribution. We urge the Commission to adopt such a grace period for start-up services.

We also urge the Commission to exempt from its captioning rules any nationally distributed programming service, whether established or start-up, that fails to reach a minimum of 15 million customer households.

IV. THE CALCULATION OF COMPLIANCE DURING THE PHASE-IN PERIOD SHOULD NOT PLACE AN UNFAIR BURDEN ON PROGRAMMERS WHOSE PROGRAMMING IS ALREADY CAPTIONED.

Some commenters have proposed that during the phase-in period the stepped increases in the captioning obligation be in addition to any captioning a programmer might already be providing. We urge the Commission to reject that proposal as unnecessary, and as a complete disregard of the voluntary captioning currently in place. Such a rule would actually border on punishment of the several programmers who have been captioning programs to any extent to date.

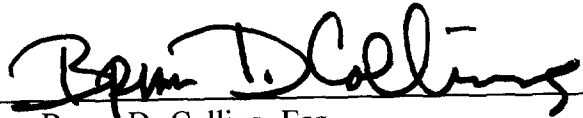
Moreover, such a rule would hinder the effectiveness of the phase-in period, the purpose of which is to allow time for the programming and captioning industries to adjust to the increased demand for captioning services. The phase-in increments proposed in the *Notice* advance that purpose by attempting to more evenly distribute the demand for captioning resources from programmers, thereby minimizing the likelihood of a bottleneck (particularly if 10 years are permitted for the phase-in). The alternative "additive" stepped increases would lead to exactly the opposite result.

V. CONCLUSION

In general, the Commission's approach to the implementation of closed captioning is a reasonable one that demonstrates a sincere appreciation of the practical, real-world obstacles that must be overcome on the path toward full compliance. We urge the Commission to continue that approach by permitting sufficient time to achieve full compliance, and by giving consideration to the other concerns expressed in these Reply Comments.

Respectfully submitted,

**NATIONAL CABLE SATELLITE CORPORATION,
d/b/a C-SPAN**

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